IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8475 of 1988

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUNGA VIRCHAND HANSAJI

Versus

DISTRICT PANCHAYAT

Appearance:

MR DK ACHARYA for Petitioner

RULE SERVED for Respondent No. 1

MR MC BAROT for Respondent No. 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 18/04/2000

C.A.V.JUDGEMENT

#. The petitioner served in the Panchayat Services of the State on the post of Talati-cum-Mantri in Banaskantha district and now stands retired with effect from

28-2-1987. After approaching the authorities of the State in appeal and lastly having not succeeded in obtaining order of change of date of confirmation on the post on which he retired, in revision petition, from the Gujarat Civil Services Tribunal, he has approached this Court, for grant of reliefs prayed by him in this Application.

#. Only a few facts concerning the services of the petitioner are relevant for deciding the petition, in view of the stand now taken by the learned counsel for the petitioner. It is pointed out that earlier, apart from raising a dispute regarding his non-confirmation from the due date, i.e. 18-10-1967 instead of from 1.1.1973, the petitioner compared his case with co-employee, namely, Shri A.A.Mansuri, who according to the information of the petitioner, as obtained from the seniority list, was that he joined service after the petitioner, although passed the departmental examination a few months before the petitioner.

#. On behalf the petitioner, learned counsel explains that during the course of the hearing of pending appeal before the Gujarat Civil Services Tribunal, on behalf of the Department when it was pointed out that there was mistake in mentioning the date of appointment of Shri Mansuri in the seniority list, the petitioner withdrew his appeal before the Tribunal. Learned Counsel for the petitioner submits that only because the petitioner withdrew his case in so far as his grievance against giving seniority to Shri Mansuri above the petitioner is concerned, his main grievance that he was not confirmed from the due date i.e. 18-10-1967 could not have been ignored. In order to restrict his grievance with regard to his non-confirmation from the due date the petitioner again approached the Gujarat Civil Services Tribunal but by the impugned order dated 4-2-1988 (Annexure L) the Tribunal has rejected his review application and refused to grant him any relief on the sole ground that such relief could not e granted in a review application.

#. On behalf of the petitioner, learned counsel argued that what now has been revealed from the orders passed in departmental appeal and the stand taken by the Department is that the petitioner was denied confirmation from due date, i.e. 18-10-1967 because his confidential reports of the past preceding years were not satisfactory, or were adverse. The main contention advanced on behalf of the petitioner is that on such uncommunicated adverse remarks or confidential reports, the petitioner could not have been denied confirmation from the due date. It is

submitted that his non-confirmation from the due date had resulted in pecuniary loss to him as he was not given selection grade in due time and it has now adversely affected his pensionary benefits. Reliance is placed on Dr. B.R.Kulkarni vs. Government of Gujarat and Others 19 GLR 1021, J.M. Upadhyaya vs. State of Gujarat and Others 2000(1) GCD 514(Guj) and K.M. Parmar vs. State of Gujarat and Another 2000(1) GCD 5999 (Guj).

#. Learned counsel appearing for the District Panchayat, Banaskantha and the District Development Officer, Banaskantha (Respondent 1 and 2) opposed the petition firstly on the ground of undue delay and laches on the part of the petitioner in raising his grievance, if any, regarding his non-confirmation in the year 1973. The petition is also opposed on the ground that the petitioner having withdrawn his case in the Tribunal he is estopped now from raising new questions and grounds in this writ petition against his non-confirmation.

#. After hearing the learned counsel for the parties, I have looked into the record which contains various orders passed by the departmental authorities and the Tribunal on the claim of petitioner that he should have been granted confirmation on the post from 18-10-1967 and consequent thereupon the selection grade. It is not denied that the petitioner's attempts earlier made before the Department and the Tribunal by comparing his case with Shri Mansuri were misdirected and they were based on some mistake in the date of entry of service of Shri Mansuri in the copy of the seniority list. Having failed in the Departmental appeal and thereafter having withdrawn his appeal in the Tribunal, the petitioner now by this petition raises certain new grounds which do not appear to have been urged when the orders were passed by the Deputy District Development Officer, Banaskantha dated 16-2-1985 (Annexure E) and by the District Development Officer, Banaskantha dated 24-12-1985 (Annexure F). No stand was taken on behalf of the Department that the petitioner was not confirmed from the due date because of adverse confidential reports. The Deputy District Development Officer, Banaskantha in reply to the representation of the petitioner, in his communication dated 16-2-1985 (Annexure E) had merely informed him that the petitioner could not be confirmed from due date as he had failed to pass the language examination. It is also stated that there were only ten posts of selection grade and as the petitioner was not among those ten as per the seniority list he could not be granted the selection grade. Similar reply had been given by the District Development Officer, Banaskantha in

his order dated 24-12-1985. In the said order the District Development Officer has stated that selection grade could not be given to the petitioner against the 89 sanctioned selection grade posts. The petitioner's position in the seniority list was at 260 and those above him in the seniority list upto 154 alone were considered for grant of selection grade. After the above mentioned communications and orders of Dy. District Development Officer and District Development Officer, the petitioner approached the Gujarat Civil Services Tribunal and in his revision for the first time apart from comparing his case with Shri Mansuri, raised a question as to how he could not be confirmed from due date on the alleged unsatisfactory confidential reports for the years 1964-65, 1965-66 and 1966-97. As has been already mentioned above, the case filed in Gujarat Civil Services Tribunal was withdrawn by the petitioner and it stood disposed of on the date of hearing on 14-7-1987.

#. From the aforesaid resume of the facts, it is clear that instead of withdrawing his revision in the Tribunal, the petitioner could have confined his grievance in the case to his non-confirmation from due date on the basis of alleged adverse confidential reports. The petitioner rightly gave up his grievance against assignment of seniority above him to Shri Mansuri. But if his other grievance regarding his non-confirmation from due date needed redressal, it was open to him to press that ground before the Tribunal. As is apparent from the contents of the proceedings mentioned above, no such ground was urged before the Tribunal and the revision was withdrawn. This Court also does not find that at any point of time the authorities of the Department in thier reply in the Services Tribunal had taken any stand that the petitioner was denied confirmation from due date because of his adverse confidential reports. The case of non-confirmation of petitioner from 18-10-1967 on the alleged ground of his adverse confidential reports cannot be allowed to be urged at such a long period, after his retirement. It is apparent that a grievance with regard to non-confirmation from the due date in the year 1973 was not agitated before the departmental authorities or in the Services Tribunal.

#. This Court also does not find any merit in the contention advanced on behalf of the petitioner that each and every remark and entry in the adverse confidential report was required to be communicated. In the matter of confirmation it is open to the concerned authority to look into the service confidentials of the petitioner to decide the question of assigning the date of

confirmation. The decisions cited on behalf of the petitioner do not support his contention that even at the time of confirmation and assigning due date of confirmation there is any requirement to communicate the contents of the confidential reports to the petitioner. It has already been mentioned above that there is no taken on behalf of the Department that the petitioner was denied confirmation from due date because of any adverse entries in his confidential reports.

#. For all of the above reasons, this Court finds no ground to grant any relief to the petitioner. Consequently, the application fails and is hereby dismissed but without any orders to costs. Rule is discharged.

(D.M. DHARMADHIKARI, C.J.)

(devu)